

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY JE D.C.
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NATIONAL HERITAGE REALTY, INC.,)
)
Plaintiff,)
)
vs.)
)
MID-SOUTH ASSOCIATES, LLC.,)
)
Defendant.)

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

No. 04-2659BV

ORDER GRANTING IN PART PLAINTIFF'S MOTION
FOR AN EXTEND DISCOVERY PERIOD

Before the court is the August 11, 2005 motion of the plaintiff, National Heritage Realty, Inc., seeking a limited extension of the discovery period of ninety days. The defendant opposes amending the scheduling order to allow additional time for discovery and insists that the plaintiff has not shown good cause to amend the scheduling order. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is granted in part.

Rule 16(b) of the Federal Rules of Civil Procedure provides that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge." Consequently, the burden is upon the moving party to establish a good cause justification for the amendment of a scheduling order. *Bradford v.*

Dana Corporation, 249 F.3d 807, 809 (8th Cir. 2001). Once this showing is made, the district court must exercise its discretion as to whether to grant the motion. *Id.* In the Sixth Circuit, "a court choosing to modify the schedule based upon a showing of good cause, may do so only 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003) (quoting Fed. R. Civ. P. 16(b)(advisory committee's notes)). Additionally, the court should consider whether the opposing party will suffer prejudice by virtue of the amendment. *Id.*

This case was filed approximately one year ago on August 26, 2004. The Rule 16(b) scheduling order was entered on February 28, 2005. It established Friday, September 2, 2005, as the deadline for completing discovery, and Monday, October 3, 2005, as the deadline for filing dispositive motions. Trial is scheduled for January 30, 2006. This is the first request for any amendment of the scheduling order.

On May 27, 2005, the defendant filed an amended counterclaim wherein it asserted a counterclaim for damages, for the first time, in the amount of \$30 million dollars. Approximately 13,000 pages of documents have been produced collectively by the parties. At the time this motion was filed, there remained about fifteen depositions to be taken collectively before the expiration of the

discovery period, including experts. Due to the schedules of counsel and the witnesses, the depositions cannot be completed before the present discovery deadline. The defendant will not suffer any prejudice by an extension of the discovery deadline.

Given the magnitude of the defendant's counterclaim for damages, the volume of documents involved, the number of depositions remaining to be taken, the diligence of the parties thus far as a whole in pursuing discovery, and the timeliness of the motion to extend the deadline, the court finds that good cause has been shown to warrant a limited extension of the discovery period.

Accordingly, the deadline for completing discovery is extended to and including Monday, October 31, 2005; the deadline for the defendant's expert disclosures is Monday, October 3, 2005; the deadline for supplementation under Rule 26(e) is Friday, October 14, 2005; and the deadline for filing dispositive motions is extended to and including Monday, November 14, 2005. All other dates remain the same.

IT IS SO ORDERED this 23rd day of August, 2005.



DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

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Honorable J. Breen
US DISTRICT COURT